

SUBCOMMITTEE: COMMUNICATIONS

HOUSE BILL NO. 831

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Communications, Technology and Innovation

on _____)

(Patron Prior to Substitute--Delegate Carroll Foy)

A BILL to amend and reenact § 55.1-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55.1-306.1, relating to utility easements; broadband and other communications services.

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-306 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55.1-306.1 as follows:

§ 55.1-306. Utility easements.

A. For the purposes of this section, "utility services" means any products, services, and equipment related to energy, ~~telecommunications~~ broadband and other communications services, water, and sewerage.

B. Where an easement, whether appurtenant or gross, is expressly granted by an instrument recorded on or after July 1, 2006, that imposes on a servient tract of land a covenant (i) to provide an easement in the future for the benefit of utility services; (ii) to relocate, construct, or maintain facilities owned by an entity that provides utility services; or (iii) to pay the cost of such relocation, construction, or maintenance, such covenant shall be deemed for all purposes to touch and concern the servient tract, to run with the servient tract, its successors, and assigns for the benefit of the entity providing utility services, its successors, and assigns.

§ 55.1-306.1. Utility easements; expansion of broadband.

A. As used in this section:

25 "Communications provider" means a broadband or other communications service provider,
26 including a public utility as defined in § 56-265.1, a cable operator as defined in § 15.2-2108.1:1, a local
27 exchange carrier, competitive or incumbent, or a subsidiary or affiliate of any such entity.

28 "Easement" means an existing or future occupied electric distribution or communications
29 easement, including a prescriptive easement, except that "easement" does not include (i) easements that
30 contain electric substations or other installations or facilities of a nonlinear character and (ii) electric
31 transmission easements.

32 "Enterprise data center operations" has the same meaning as provided in § 58.1-422.2.

33 "Incumbent utility" means the entity that is the owner of the easement.

34 "Indemnified parties" means a public utility, an incumbent utility, or any subsidiary or affiliate of
35 any such entity and the employees, attorneys, officers, agents, directors, representatives, or contractors of
36 any such entity.

37 "Occupancy license agreement" means an uncompensated agreement between an incumbent utility
38 and a communications provider, for use when the communications provider wishes to occupy an easement
39 underground, that contains nondiscriminatory provisions based on safety, reliability, and generally
40 applicable engineering principles.

41 "Prescriptive easement" means an easement in favor of an incumbent utility or communications
42 provider that is deemed to exist, without any requirement of adverse possession, claim of right, or
43 exclusivity, when physical evidence, records of the incumbent utility, public records, or other evidence
44 indicate that it has existed on the servient estate for a continuous period of 20 years or more, without
45 intervening litigation during such period by any party with a title interest seeking the removal of utility
46 facilities or reformation of the easement. The size of such easement shall be deemed to be the greater of
47 the actual occupancy of the easement or 15 feet on each side of the installed facilities' center-line.

48 "Public utility" has the same meaning as provided in § 56-265.1.

49 "Sensitive site" means an underlying servient estate that is occupied by a railroad or an owner or
50 tenant having operations related to national defense, national security, or law-enforcement purposes.

51 B. It is the policy of the Commonwealth that:

52 1. Easements for the location and use of electric and communications facilities may be used to
53 provide or expand broadband or other communications services;

54 2. The use of such easements to provide or expand broadband or other communications services
55 is in the public interest;

56 3. The use of such easements to provide or expand broadband or other communications services
57 does not (i) constitute a change in the physical use of the easement, (ii) interfere with, impair, or take any
58 vested or other rights of the owner or occupier of the servient estate, or (iii) place any additional burden
59 on the servient estate; and

60 4. The installation and operation of broadband or other communications services within any such
61 easements are merely changes in the manner, purpose, or degree of the granted use as appropriate to
62 accommodate a new technology.

63 C. Absent any express prohibition on the installation and operation of broadband or other
64 communications services in an easement that is contained in a deed or other instrument by which the
65 easement was granted, the installation and operation of broadband or other communications services
66 within any easement shall be deemed, as a matter of law, to be a permitted use within the scope of every
67 easement for the location and use of electric and communications facilities.

68 D. Subject to compliance with any express prohibitions in a written easement, any incumbent
69 utility or communications provider may use an easement to install, construct, provide, maintain, modify,
70 lease, operate, repair, replace, or remove any communications equipment, system, or facilities, and
71 provide communications services through the same, without such incumbent utility or communications
72 provider paying additional compensation to the owner or occupant of the servient estate, provided that no
73 additional utility poles are installed.

74 E. In cases of a prescriptive easement as prior established in a court of competent jurisdiction, such
75 easement shall be deemed to exist.

76 F. Any incumbent utility or communications provider may use a prescriptive easement to install,
77 construct, provide, maintain, modify, lease, operate, repair, replace, or remove any communications
78 equipment, system, or facilities, and provide communications services through the same, without such

79 incumbent utility or communications provider paying additional compensation to the owner or occupant
80 of the servient estate, provided that no additional utility poles are installed.

81 G. Any incumbent utility may grant to any communications provider rights to install, construct,
82 provide, maintain, modify, lease, operate, repair, replace, or remove any communications equipment,
83 system, or facilities, and to provide communications services through the incumbent utility's prescriptive
84 easement, including the right to enter upon such easement without approval of the owner of the servient
85 estate, such grant and use being in the public interest and within the scope of the property interests acquired
86 by the incumbent utility when the prescriptive easement was established.

87 H. In any action for trespass, or any claim sounding in trespass or reasonably related thereto, to
88 real property that is brought against an incumbent utility or a communications provider arising after July
89 1, 2020, in relation to the existence, installation, construction, maintenance, modification, operation,
90 repair, replacement, or removal of any poles, wires, conduit, or other communications infrastructure,
91 including fiber optic or coaxial cabling, if proven, damages recoverable by any landowner bringing such
92 claim shall be limited to actual damages based on any reduction in the value of the land as a result of the
93 existence, installation, construction, maintenance, modification, operation, repair, replacement, or
94 removal of communications facilities, as such tract existed at the time that any alleged trespass began
95 giving rise to such claim.

96 I. Nothing in this section shall be deemed to limit any liability for personal injury or damage to
97 tangible personal property of the landowner caused directly by the activities of the incumbent utility or
98 communications provider while on or adjacent to the landowner's real property.

99 J. Any communications provider making use of an easement pursuant to this section shall:

100 1. Enter into an agreement with the incumbent utility authorizing it to use an easement;

101 2. Adhere to such restrictions as the incumbent utility may place on the communications provider,
102 provided that such restrictions are reasonably related to safety, reliability, or generally applicable
103 engineering principles and are applied on a nondiscriminatory basis;

104 3. For underground facilities, enter into an occupancy license agreement with the incumbent utility;
105 and

4. Indemnify and hold harmless the indemnified parties as against any third party for any claim arising out of its entry onto, use of, or occupancy of such easement.

K. A communications provider, making use of an easement pursuant to this section, shall not locate a telecommunications tower in such easement.

L. As against a communications provider, no incumbent utility shall:

1. Solely by virtue of the provisions of this section, require any additional compensation for use of an easement, unless such compensation is required expressly in a written easement or other agreement;

2. Unreasonably refuse to grant an occupancy license agreement to any communications provider;

3. Include in an occupancy license agreement demands for title reports, surveys, or engineering drawings; or

4. Use an occupancy license agreement for dilatory purposes or to create a barrier to broadband or
other communications services deployment.

M. Nothing in this section shall apply to those easements located on sensitive sites or housing enterprise data center operations.

N. Notwithstanding any provision of this section, a public utility or an incumbent utility may (i) assess fees and charges and impose reasonable conditions on the use of its poles, conduits, facilities, and infrastructure, which, as regarding attachments to electric utility poles, shall be subject to the provisions of 47 U.S.C. § 224 for investor-owned utilities and to § 56-466.1 for electric cooperatives.

O. Nothing in this section shall be construed to inhibit, diminish, or modify the application of the provisions of Chapter 4 (§ 56-76 et seq.) of Title 56 or § 56-231.34:1 or 56-231.50:1, as applicable.

P. The provisions of this section shall be liberally construed.

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